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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,762	06/22/2001	David L. Thompson	P-9148.00	8719
27581	7590	01/20/2006	EXAMINER	
MEDTRONIC, INC.			RINES, ROBERT D	
710 MEDTRONIC PARK			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55432-9924			3626	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/887,762	Applicant(s) THOMPSON, DAVID L.	
	Examiner Robert D. Rines	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/14/02</u> <u>6/22/01</u> | 6) <input type="checkbox"/> Other: _____ |

Notice to Applicant

[1] This communication is in response to the patent application filed 22 June 2001. It is noted that this application benefits from Provisional Patent Application Serial No. 60/213,858 filed 23 June 2000. The IDS statements filed 22 June 2001 and 14 March 2002 have been entered and considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

[2] Claims 3, 6, 8, 10 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

[A] As per claim 3, the applicant recites the phrase "one of and a combination of a video cam, voice recognition, digital signature..." (Claim 3, lines, 1 and 2). It is unclear as to how it would be possible to have "one of" AND "a combination" of a list of items. Therefore, claim 3 is rejected under 35 U.S.C. 112 for failing to distinctly claim the subject matter which applicant regards as the invention.

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[B] As per claim 6, the applicant recites the phrase "capture anatomical images of the patient and/or nurse..." in claim 4 of the present case. Claim 6 recites the phrase "image transferred to said remote location is implemented to identify the nurse before allowing access..." As claim 6 depends on claim 4, it is unclear how anatomical images of the patient could be utilized to identify the nurse. Therefore, claim 6 is rejected under 35 U.S.C. 112 for failing to distinctly claim the subject matter which applicant regards as the invention.

[C] As per claim 8, the applicant recites the phrase "means for positively identifying" in line 4 of claim 1 and then subsequently recites the phrase "said means for identifying" in line 8 of claim 1. In claim 8, applicant recites the phrase "said means for positively identifying" in line 1 of claim 8. It is unclear as to whether applicant intends to distinguish "positively identifying" from "identifying". Within claim 1, applicant proceeds from the narrow limitation of "positively identifying" to the broader limitation of "said means for identifying". Within claim 1 it is clear to the examiner that "said means for identifying" refers to "positively identifying" recited earlier in the claim. However, subsequently in claim 8, applicant recites the phrase "said means for positively identifying". As structured, there is insufficient antecedent basis for this limitation in claim 8.

[D] As per claim 10, applicant recites the limitation "said means for downloading patient location" in line 10 of claim 10. There is insufficient antecedent basis for this limitation in the claim.

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[E] As per claim 12, applicant recites the limitation "said means for downloading patient location" in line 1 of the claim 10. There is insufficient antecedent basis for the limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[3] Claims 1-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art in the background of the present application (United States Patent Application #09/887762) in view of Levine et al., (United States Patent #6,327,501).

[A] As per claim 1, applicant's admitted prior art teaches that; (1) means for positively identifying the visiting nurse (09/887,762; p.2, lines 23-29 and p.3, lines 23-29), (2) means for establishing a wireless data communication with the one or more (IMDs) in the patient (09/887,762; p.2, lines 14-15); and (3) said means for identifying, said means for establishing and said means for downloading being activatable by digital contact with a screen incorporated

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in the extender thereof (09/887,762; p.3, lines 16-21), are all well known and commonly used in the art.

[B] While Levine does not teach the identification of the visiting nurse, nor does Levine teach functions "activatable" by digital contact with an incorporated screen, Levine does teach accessing patient data stored in one or more implantable medical devices (IMDs) (Levine; Abstract and col. 3, lines 13-16). Levine further teaches means for downloading patient data from the one or more IMDs (Levine; col. 3, lines 13-16).

[C] It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of applicant's admitted prior art with those of Levine. Such combination would have resulted in a portable device, such as a pen-based tablet computer, capable of receiving data transmitted from a medical device implanted in a patient via wireless connection or telemetry (Levine; col. 5, lines 19-21 and lines 45-51). Further, such a system would have provided secure access capability such as user verification via voice recognition or facial recognition (09/887,762; p.3, lines 23-29). The motivation to combine would have been to retrieve patient data stored in an IMD and display the data for review by a medical practitioner/user on the graphical display of a tablet computer (Levine; col. 5, lines 19-21, 45-50 and col. 10, lines 50-54).

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[D] As per claim 2, both applicant's admitted prior art and Levine teach wireless data communication means includes a telemetry system (Levine; Abstract and col. 3, lines 13-16) (09/887,762; p.2, lines 14-15).

[E] Regarding claim 2, the obviousness and motivation to combine as discussed with respect to claim 1 above are applicable to claim 2 and are herein incorporated by reference.

[F] As per claim 3, applicant's admitted prior art teaches said means for identifying includes one of and a combination of a video cam, voice recognition, digital signature, biological/physiological sensor to positively identify the visiting nurse (09/887,762; p. 2, lines 23-29). Levine teaches allowing access to IMD data via the portable extender (Levine; col. 3, lines 13-16).

[G] Regarding claim 3, the obviousness and motivation to combine as discussed with respect to claim 1 above are applicable to claim 3 and are herein incorporated by reference.

[H] As per claim 4, applicant's admitted prior art teaches said video cam is implemented to capture anatomical images of the patient and/or the nurse (09/887,762; p. 2, lines 24-29 and p.3, lines 25-29).

[I] As per claim 5, applicant's admitted prior art teaches said anatomical images are transferred to a remote location (09/887,762; p.2, lines 24-29 and p.3, lines 25-29).

[J] As per claim 6, applicant's admitted prior art teaches wherein said anatomical image transferred to said remote location is implemented to identify the nurse as a security measure (09/887,762; p.2, lines 24-29 and p.3, lines 25-29). Levine teaches allowing access to IMD data (Levine; col. 3, lines 13-16).

[K] Regarding claims 4-6, the obviousness and motivation to combine as discussed with regard to claim 1 above are applicable to claims 4-6 and are herein incorporated by reference.

[L] As per claim 9, Levine et al., teaches wherein data is transferred via a wireless communication link including one of a cellular and satellite system (Levine; col. 6, lines 33-37).

[M] Regarding claim 9, the obviousness and motivation to combine as discussed with regard to claim 1 above are applicable to claim 9 and are herein incorporated by reference.

[4] Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's admitted prior art and Levine as applied to claim 1 above, and further in view of Dussell et al., (United States Patent #6,411,899).

[A] While Levine teaches a pen-based tablet computer, capable of receiving data transmitted from a medical device implanted in a patient via wireless connection or telemetry (Levine; col. 5, lines 19-21 and lines 45-51), Levine does not teach inclusion of a GPS in the tablet computer.

[B] However, both the applicant's prior art, as well as Dussell et al., teach including a GPS system imbedded to enable the nurse to plot a most efficient sequence of visits to patients scheduled at a given time (09/887,762; p.4, lines 9-15) (Dussell et al.; col. 1, lines 63-67 and col. 2, lines 1-16).

[C] It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of the applicant's admitted prior art and Levine with those of Dussell et al. Such combination would have resulted in a portable pen-based tablet computer (see claim 1 above) with the addition of an embedded GPS navigational capability (09/887,762; p.4, lines 9-15). The motivation to combine would have been to apply real time positioning systems to assist in task scheduling (Dussell et al.; col. 1, lines 12-15).

[5] Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applicant's admitted prior art and Levine as applied to claim 1 above, and further in view of Black (United States Patent #6,307,956) and Schoenberg (United States Patent #6,463,417).

[A] As per claim 8, while the applicant's admitted prior art does not teach identification by fingerprint or iris data, the applicant's prior art does teach teaches means for positively identifying includes means for comparing data including facial and voice data against stored biometrics data (09/887,762; p.3, lines 23-30).

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[B] However, Black teaches a portable device (Black; col. 5, lines 1-10 and Fig. 17b) with means for identification by fingerprint (Black; Abstract, col. 5, lines 24-35, and Fig. 2A). Black further discloses using other biometrics including, but not limited to, fingerprints, voice recognition, facial imaging, and DNA and other biotech properties (Black; col. 4, lines 30-35). Although Black does not specifically teach the use of iris scans/data, it is the examiner's interpretation of Black's use of the phrase "including, but not limited to" to mean other well known means of identification. Such well known means include the use of iris scans or data, as noted by Schoenberg (Schoenberg; col. 5, lines 40-45).

[C] It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of the applicant's prior art and Levine with those of Black and Schoenberg. Such combination would have resulted in a system capable of identifying an individual accessing patient data by fingerprint (Black; col. 5, lines 24-35), facial recognition and voice data (09/887,762; p.3, lines 23-30) and iris data (Schoenberg; col. 5, lines 40-45). The motivation to combine would have been to provide a system that can capture biometric properties for authenticating the identification of a person accessing a computer network (Black; col. 1, lines 25-31 and col. 4, lines 30-35).

[6] Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levine and Dussel as applied to claim 7 above, and further in view of Evans (United States Patent #5,924,074).

[A] As per claim 10, Levine teaches a portable extender adapted for use by a visiting nurse to manage home-based care of one or more patients with one or more IMDs (Levine; Abstract). Further, Levine teaches the portable extender and computer-implemented software in combination, comprising: means for downloading patient data from the IMDs (Levine; Abstract, col. 3, lines 13-16). Levine does not teach scheduling tasks, entering non-IMD data, or transferring patient evaluation data.

[B] However, Dussell teaches means for downloading a daily schedule data for the nurse (Dussell; Abstract, col. 7, lines 24-44, and Fig. 1). Evans teaches means for entering non-IMD medical data (Evans; Abstract, col. 2, lines 45-55), and Evans teaches means for transferring the patient evaluation data to a remote location (Evans; Abstract, col. 2, lines 30-38, and Fig. 1):

[C] It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Levine and Dussell with those of Evans. The motivation to combine would have been to provide an apparatus and system that captures multiple facets of patient data such as lab orders, medications, procedures, device data, and diagnoses at the point of care (Evans; Abstract) (Levine; Abstract, col. 3, lines 13-16).

[D] As per claim 11, Dussell teaches means for downloading a daily schedule includes one of IvDA, RF cellular and satellite link between the portable extender and a remote clinic/physician station (Dussell; col. 2, lines 45-53)

[E] As per claim 12, Dussell teaches means for downloading patient location includes an imbedded GPS system including software to calculate the most efficient sequence of patient visits scheduled for the nurse (Dussell; col. 3, lines 45-48 and col. 7, lines 24-44).

[F] As per claim 13, Evans teaches means for entering non-IMD medical data includes a data base where additional physiological data about the patient is entered and updated during the nurse's visit (Evans; col. 2, lines 45-57).

[G] Regarding claims 11-13, the obviousness and motivation to combine as discussed with regard to claim 10 above are applicable to claims 11-13 and are herein incorporated by reference.

[7] Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levine, Dussell and Evans as applied to claim 10 above, and further in view of Miller (United States Patent #5,235,702).

[A] As per claim 14, Evans teaches software to access patient medication information (Evans; col. 2, lines 35-44), pharmacist contact data bases (Evans; col. 2, lines 47-64 and col. 11, lines 1-5), and physician expert contact/consulting data base (Evans; col. 2, lines 47-64). Although

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Evans teaches database including information related to payment and reimbursement (Evans; col. 5, 37-40), Evans fails to specifically teach Medicare reimbursement functions or Medicare form generation.

[B] However, Miller teaches Medicare form generation (Miller; col. 7, lines 62-68).

[C] It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Levine, Dussel, and Evans with those of Miller. Such combination would provide a system and apparatus that permits instant, sophisticated analysis of patient data and includes the capability to access reference databases for consultation regarding allergies, medication interactions and practice guidelines (Evans; Abstract). The motivation to combine would have been include in such a system, the feature of providing a computer readable document of known format (Miller; Abstract) that is relevant to the treatment of the patient.

Conclusion

[8] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lebel et al., MICROPROCESSOR CONTROLLED AMBULATORY MEDICAL APPARATUS WITH HAND HELD COMMUNICATION DEVICE, United States Patent Application Publication #2002/0016568; Bardy, SYSTEM AND METHOD FOR PROVIDING PATIENT STATUS FEEDBACK VIA AND AUTOMATED PATIENT CARE SYSTEM WITH SPEECH-BASED WELLNESS MONITORING, United States Patent #6,331,160; David


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et al., AMBULATORY PATIENT HEALTH MONITORING TECHNIQUES UTILIZING INTERACTIVE VISUAL COMMUNICATION, United States Patent #5,544,649; Longginou et al., INFORMATION TRANSMISSION SYSTEM FOR TRANSMITTING VIDEO SIGNALS OVER CELLULAR TELEPHONE NETWORKS, United States Patent #5,841,971; Coffin et al., FACIAL RECOGNITION SYSTEM FOR SECURITY ACCESS AND IDENTIFICATION, United States Patent #5,991,429. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert D. Rines whose telephone number is 571-272-5585. The examiner can normally be reached on 8:30am - 5:00pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDR


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER